

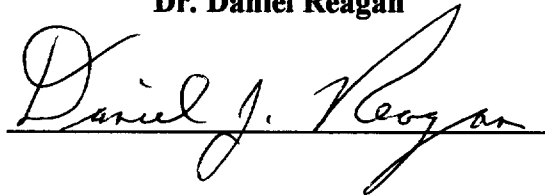
Same Sex Marriage and Homosexual Adoption in Indiana

An Honors Thesis (HONRS 499)

by

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A handwritten signature in cursive script, reading "Daniel J. Reagan", is written over a horizontal line.

Ball State University

Muncie, Indiana

May 1999

Graduation Date: May 8, 1999

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Abstract

This discussion of the advancement and repression of rights of homosexual individuals focuses on government regulations governing the adoption of children by homosexual individuals and couples and same sex marriage laws. Proposed legislation to prohibit homosexual adoption in Indiana during the 1999 legislative session of the Indiana General Assembly is chronicled with references given to similar legislation and statutes in other states. The struggle of same sex couples to obtain civil marriages is also discussed which is centered on government regulations in Indiana to deny the recognition of such marriages. Brief histories of these two issues are studied to better understand their interconnectedness and to predict future legal changes that may arise to either prohibit or expand the rights and protections of homosexuals.

In the closing lines of the dissent for Bowers v. Hardwick, the 1986 Supreme Court ruling that upheld a Georgia law that made acts of sodomy performed by anyone in any place a crime, Justice Harry Blackmun wrote:

“ . . . depriving individuals of the right to choose for themselves how to conduct their intimate relationships poses a far greater threat to the values most deeply rooted in our Nation’s history than tolerance of nonconformity could ever do.” (Ellis 118)

Throughout the United States and especially in the State of Indiana, homosexual individuals battle to obtain the same rights that are granted to heterosexual Americans. This uphill struggle has led supporters of gay rights to seek equality through governmental regulation. Opponents of these so called “gay rights” argue that private sexual activity between consenting adults is not the basis for governmental regulation and that everyone is governed by the same rules of fairness and protection from discriminatory laws. To this gay rights supporters quickly point out that anti-gay discriminatory laws *are* based on the private sexual activity between consenting adults and identify certain people for the law to treat differently.

Two issues concerning the rights of homosexuals that cause concern for some people and hope for others precipitate an especially large amount of debate. The obtainment of homosexual adoption and same sex marriage are two of the key issues sought by homosexual couples. These two issues are also greatly opposed by many who wish to keep the traditional definition of marriage and families free from change. Closely intertwined, homosexual adoption and same sex marriage debates have recently come to the forefront in this country. As the courts are more and more being asked to decide whether the best interests of children are interfered with by the sexual

orientation of the parent, many of the same arguments being raised over same sex marriage are appearing in the court proceedings of these cases. Although progress has been difficult and slow, homosexual individuals are gaining greater acceptance. According to a Time/CNN poll last October, the number of people who feel that homosexual relationships are acceptable for others has risen from 35% in 1978 to 52% in 1998 (Lacayo 36). As chronicled by the difficulties in obtaining equal treatment in Indiana, supporters of homosexual rights still have a long road to travel.

Discrimination is defined in Webster's Dictionary as "policies directed against the welfare of minority groups." During the 1999 legislative session of the Indiana General Assembly, two bills with identical contents, one in the Senate and one in the House of Representatives, were introduced to prohibit homosexual persons from adopting children or becoming foster parents in this state. Although the authors of these bills claimed that their motivations were to best serve the interests of children, it seems obvious that the true motivation of these individuals was discriminatory in nature.

The issue of homosexuals adopting children came to the forefront last year when a homosexual couple in Anderson, Indiana, had been given court approval to adopt a child. The biological family of this child found out that he or she was on the verge of joining a family that consisted of a same-sex couple and petitioned the court to stop this adoption. Although the child's biological family did not wish to be responsible for this child themselves, they also did not want the child to be placed with a homosexual couple. The media was contacted about this scandal, and soon the issue of homosexual adoption became another means in which the people of Indiana could voice their opinions.

In response to this uproar in Anderson, Indiana State Representative Woody Burton drafted House Bill 1055. HB 1055 was to be a new provision added to the Indiana Code which stated, "The division may not grant a license to operate a foster family home to a homosexual." It further goes on to alter the Indiana Code by also adding, "A person who is a homosexual is not entitled to adopt an individual under this article." This bill received a first reading in the House of Representatives on January 6, 1999. It was then assigned to the House Committee on Courts and Criminal Code. HB 1055 never received a hearing in this committee, and this bill thus died in the House. The attempt to prohibit homosexuals from adopting and to continue the tradition of discriminating against those who are different did not end though.

A bill with exactly the same wording was also proposed in the Indiana Senate this session. This bill began as Senate Bill 560 and was authored by Senator John Waterman of Shelburn, Indiana. Adding their names as co-authors to this bill were Republican State Senators Kent Adams of Bremen, David Ford of Hartford City, Robert Jackman of Milroy, Marvin Reigsecker of Goshen, and Steven Johnson of Kokomo. SB 560 was read for the first time in the Senate on January 21, 1999 and referred to the Senate Judiciary Committee. This committee is chaired by Senator Richard Bray of Martinsville.

Senator Bray struggled for weeks trying to decide whether or not to hear SB 560 in his committee. If he did not hear this bill, the issue would be dead for the 1999 legislative session. Many different groups including the Indiana Civil Liberties Union, the Family and Social Services Administration, and various pro-homosexual rights lobbyist groups pressured Senator Bray to not give SB 560 a hearing. He was also being strongly urged by the bill's authors, advocates for Advance America, and individuals from Anderson to give this bill a hearing and allow the full

Senate to debate the merits of such legislation. This issue had also become a hot topic among the media which in turn increased the public's interest.

In order to encourage Senator Bray to hear SB 560 in his committee, Senator John Waterman sent out a memo to each of the State Senators. Attached to this memo was what he called "statistical data" that had been given to him. This "data" was not referenced. One questionable statement from this attachment included, "29% of children raised by at least one homosexual parent reported having had sex with the homosexual parent. Less than one percent (0.6%) of the children of heterosexuals reported having had sex with one of their parents." Another statement given by a girl who was brought up in a lesbian household from this memo read, "I had to 'prove' my femininity, and I did that by becoming promiscuous with men" (Waterman 3). Pressure quickly mounted for Senator Bray to make a decision.

To be heard during the Judiciary Committee meeting previous to the final meeting of this committee, Senator Bray placed SB 560 on the committee schedule. The Wednesday morning that this committee meeting was scheduled to meet, the halls in the basement of the Indiana Statehouse, where the committee meeting was held, became packed with individuals who wished to express their views on this bill to committee members. Dozens of people wore pins on their lapels that read, "I support ALL families." Several homosexual couples shuffled into the committee room to save seats for themselves and their children to let committee members see first-hand the nontraditional families in Indiana.

Then minutes before the slated beginning of this committee, Senator Bray withdrew Senate Bill 560 from the committee schedule. That was the end of SB 560, but alas, it was hardly the end of this turbulent issue.

During this Senate Judiciary Committee, the original contents of Senate Bill 311, which dealt with paternity and adoption procedures, were incorporated into Senate Bill 310. Both of these bills dealt with laws that govern adoption. This action set the stage for the continuation of the prohibition of homosexuals from become foster parents or adopting children in Indiana.

During the following week which was the final week for committee hearings on senate bills, Senator Richard Bray placed Senate Bill 311 on the Judiciary committee schedule. Presently this bill was virtually only a number or an empty bill with no contents. When SB 311 was called before the Judiciary Committee, Senator Waterman proposed an amendment to this bill. This amendment was one that he called a "compromise" amendment. It did not explicitly state that homosexuals would not be allowed to adopted children as HB 1055 and SB 560 had, but this bill set up a list of guidelines for the courts to follow in granting adoptions. Included in these proposed guidelines was that in order for a person to become a foster parent or adopt a child a person must be living with the person's spouse in an intact marriage recognized under Indiana law. The only exception to this would be if based on "clear and convincing evidence" it was in the best interest of the specific child to be placed in a home not meeting the previous requirements. This new bill now not only encompassed homosexual individuals but also all single persons who attempt to become foster or adoptive parents as well.

Several people spoke in favor of this bill to the Judiciary Committee. The fist of these was Eric Miller, the lobbyist for Advance America. Miller stated that the best place for a child to reside is with a family that consists of a mother and a father. He further argued that intact families are the bedrock of Hoosier families and should be encouraged. He discussed the difficulty that judges face in making decisions concerning adoption and that it would ease their burden to adopt

state guidelines for these judges to follow. When questioned by Senator Anita Bowser of Portage as to whether this bill was a discriminatory measure, Miller answered that the sole purpose of the bill was to place children in the best homes.

The next two proponents that spoke in favor of this legislation were two gentlemen from Anderson. Pastor Holdstead discussed his church's view on this issue and read a letter that was composed by the mayor of Anderson that stated that he was in favor of banning homosexuals from adopting and becoming foster parents. Butch Kinderly then presented the committee members with a petition signed by 5700 Anderson residents that he stated said that they were against adoption by homosexuals. He claimed that the signers of this petition believe that children emulate their surroundings, and they wish to protect children from these circumstances. Senator Cleo Washington of South Bend asked Mr. Kinderly if the survey respondents were actually responding to the broad question of homosexual adoption or to the specific incident in Anderson. Kinderly responded that the petitioners had been responding to the uproar in Anderson specifically.

The next individual that spoke in favor of Senator Waterman's amendment to SB 311 was Dr. Walker from Bloomington, Indiana. Although Dr. Walker gave no scientific data, he did share with the committee personal testimony concerning his interactions with homosexuals. Dr. Walker said that he believed that there was no genetic disposition for homosexuality and that a child has a greater chance of becoming gay if raised in a gay home. For proof of this hypothesis, Dr. Walker cited a friend of his that was homosexual whose father was also homosexual.

Mike Heath of the Indiana Family Institute spoke to the committee about the abundance of traditional families that are waiting to adopt a child. He felt that these families should not be

turned down while children are being placed with homosexual families. Doris Jackworth wrapped up the proponent argument with a personal testimony. She stated that it is very difficult for birth mothers to give their babies up for adoption. By allowing homosexual individuals and couples to adopt children, the state would be discouraging women from choosing adoption as an option to an unwanted pregnancy.

Next came the testimony from opponents to Senator Waterman's amendment. Shawn Limue, attorney with the Indiana Civil Liberties Union, was the first to testify. He argued that the current standard for judges to follow in deciding adoption placements is what is in the best interest of the child. He strongly questioned the need for a change in this system. It is now extremely difficult for any individual to adopt a child in Indiana. Mr. Limue stated that he did not think that it would be beneficial to children for the legislature to make it more difficult for people to adopt children. It would be the children that would be suffering while they wait for approval. Mr. Limue also questioned the increases in costs to the counties which would have to pay for the increase in judicial time to decide these cases.

The second individual to testify against SB 311 was Steve Kirsh, an Indianapolis attorney that specializes in adoption. He spoke to the fact that current adoption laws are working well and should not be changed. Many of the birth mothers that he works with participate in the choosing of the adoptive parents for their children. This law would take away from birth mothers' decision making. It may be the wish of the birth mother that her child be placed in a single parent or homosexual family household. Under this proposed law, this mother could not have her wished honored. Mr. Kirsh also talked of the emergency clause that was a part of this bill. This clause would cause this bill to become Indiana law immediately upon its adoption. Mr. Kirsh felt that

this emergency clause could have negative effects on pending adoption cases and plug up the court system.

Next, Jim Marovich, the Director of the Family and Social Services Administration of Indiana, testified against SB 311. He stated that the criteria that is set out in SB 311 is already criteria that judges take into consideration when deciding adoption cases. To change the standard for adoption from "what is in the best interest of the child" to "clear and convincing evidence" was unnecessary and burdensome. This would not help the thousands of children in Indiana who are awaiting adoption and living foster care but would make their struggle all the harder. Mr. Marovich told the committee that there were currently over three thousand children in foster care in Indiana that were placed with single parent families. Since SB 311 would take affect immediately, all of these 3,000 children would become homeless. They would lose the only family that they have and the little stability that is in their lives.

Pastor Jeff Manor of Indianapolis continued the testimony against Senate Bill 311. He began by questioning the singling out of certain individuals and groups of individuals. Why was it to be assumed that single persons were less adequate parents than married persons? Pastor Manor's church accepts homosexuals into its congregation. He told the committee of the high moral standard that are held by the gay and lesbian individuals in his church. Pastor Manor also quoted research from an American psychological publication which stated that children who are raised by homosexual parents do not have any greater tendencies toward homosexuality than children that are raised in heterosexual households.

The final testimony against the prohibition of adoption by homosexuals came from Amy Hayes. Ms. Hayes is a lesbian and an adoptive parent that resides in Bloomington with her life

partner. Ms. Hayes gave personal testimony about raising her daughter, the joys that parenting brings, the challenges that they have overcome, and about the relationships within their family. She agreed with the other persons that testified before the Judiciary Committee that children need good homes, but she stated, "There are many types of good homes."

After the testimony ended, Senator Bray asked the people in the committee room who opposed and advocated Senate Bill 311 to stand to signify their stance on this issue. The members of the Senate Judiciary Committee then began their discussion of this proposed legislation. The members of this committee include Senators Richard Bray, chairman, Joe Zakas, ranking member, Cleo Washington, ranking minority member, David Ford, Murray Clark, Teresa Lubbers, Rose Antich, Luke Kenley, David Long, Tim Lanane, and Anita Bowser.

The committee discussed several points that had been brought up during the public testimony and also concerns that they perceived with SB 311 themselves. Senator Lanane noted that there had been no testimony from any judges or representatives of the judiciary. He stated that he has faith in the current practices of Indiana judges and in their ability to make sound decisions concerning adoption placements. He also brought up the point that this bill creates a different set of standards for single persons to meet than married persons when adopting. Senator Lanane stated that he would be in favor of this bill if the same standards applied to all people who were trying to adopt a child. "Why," he asked, "shouldn't everyone be required to meet these standards?" Senator Cleo Washington advanced Senator Lanane's argument against SB 311 by citing that the Indiana Constitution prohibits the discrimination of any class of citizens. SB 311 is creating a class of persons consisting of single individuals and discriminating against them by forcing them to meet certain standards that another class, namely married persons, is not required

to meet. Senator Washington stated that if this bill made it into the Indiana Code, it would certainly be ruled unconstitutional by the Indiana Supreme Court.

Attempts were made by the Democrat committee members and Senator Teresa Lubbers to amend SB 311 so that the same guidelines in adoption apply to all people. This amendment failed marginally after a heated discussion in which Senator Ford stated that this bill sets up a procedure in which the committee has a responsibility to pass to protect the children. "These children, " he asserted, " have several strikes against them already. They should be in a stable home."

The Judiciary Committee then voted on Senate Bill 311. This measure passed by a vote of five to four. The breakdown of the vote was as follows:

Bowser:	No
Lanane:	No
Washington:	No
Long:	Yes
Zakas:	Yes
Ford:	Yes
Clark:	Yes
Lubbers:	No
Antich:	Not Present
Kenley:	Not Present
Bray:	Yes

The next step in the process of a bill becoming a law is the adoption of committee reports by the full Senate. This is usually just a procedural action in which the Reader for the Senate reads all of the committee reports and the President of the Senate, Lieutenant Governor Joseph Kernan, asks if there are any ayes or nays in adopting this report. During the 1999 legislative session, never before had any of the Senators actually answered Lieutenant Governor Kernan's question.

About an hour previous to the convening of session on February 25, 1999, every Senator

received on his or her desk a copy of all the amendments that had passed through the various committees during the last few days. Included in this group was the amendment to SB 311, which had become the entire contents of this bill during the discussed Judiciary Committee. The amendment that had passed the Judiciary Committee for SB 311 was seven pages long and set forth guidelines for judges to follow in making judicial rulings on adoptions. Included in these guidelines was the prohibition of adoption by a person who was not in an intact marriage as defined by Indiana law unless it could be proven with clear and convincing evidence that it was in the best interest of the specific child to do so. But, strangely enough, this is not what amendment SB 311-1 that appeared on the desks of the Senators stated. Instead this bill was an exact replica of Senate Bill 560, which prohibited homosexuals from operating a foster family home and adopting an individual. The members of the Judiciary Committee soon caught wind of this, and anger ignited throughout the Senate.

Several of the Judiciary Committee members who voted to pass SB 311 out of committee did so because they believed that Senator Waterman was willing to compromise on his original bill, SB 560. They had stated this during the committee and had also stated that they hoped the wording of this bill would still be debated further. By changing this amendment before it reached the Senate floor, Senator Waterman proved that he was not willing to work with the other members of the Senate on this issue. Changing the amendment without the approval of the Judiciary Committee was completely against Senate protocol. Both the Senate Republican and Democrat Caucuses caucused immediately upon the opening of session to discuss these matters behind closed doors.

Both parties were in caucus for over an hour. Finally they each emerged from their caucus

rooms and reconvened for session to begin. Events began as usual. Then came the adoption of committee reports. The Judiciary Committee Report on Senate Bill 311 was read, and the Lieutenant Governor asked his usual question for ayes and nays for adoption. Instead of visiting with their peers as usual, this time the Democrat Senators shouted a resounding "No!" while the Republican Senators sat silently. Anyone could have asked for a "head count" in which the Senators for and against a vote stand to be counted for an accurate tally. This was not their intention. The intention was to kill this committee report and in doing so kill Senate Bill 311.

Senator Waterman was not on the floor of the Senate during these proceedings. He was quoted in the Indianapolis Star as saying, "By the time I got down there, they said it was too late. I couldn't do anything. I'm really disappointed in the Lieutenant Governor for participating in that type of action and the Democrat caucus. It's just one of the dirtiest things I've seen since I've been up here. It just taints the process." Despite this quote, Senator Waterman was quite aware of the actions that were to take place on the Senate floor that afternoon. It was the idea of Senator Richard Bray, chairman of the Senate Judiciary Committee, to send this committee report to its demise. Senator Waterman had deceived his fellow Senators, and this action was not going to be tolerated.

This could have ended the debate on homosexual adoption for the Indiana General Assembly this year, but Senator John Waterman was determined to keep fighting. In the memo that he distributed to all of the State Senators he wrote, "I hope that you will be able to understand why I have decided to not only author this bill [SB 560], but to fight for it to be heard as diligently as I have. I want all of us to keep in mind that this is not a bill about discrimination but rather it is about doing what is best for the children of Indiana, and the future of our state and

our country" (Waterman 1).

With this, Senator Waterman filed three amendments to be added to Senate Bill 310, which dealt with adoption procedures. The first of these amendments, SB 310-1, was again a replica of SB 560. The second amendment, SB 310-2, prohibited the adoption of individuals by homosexuals but did not include the foster care language in the first amendment. The third amendment, SB 310-3, stated, "A person who is a homosexual is not entitled to adopt an individual under this article." This was the same idea as in the previous two amendments but slightly different wording.

In addition to these amendments proposed by Senator Waterman, three additional amendments to SB 310 were proposed by Senator Kenley and Senator Long. All three of these amendments were very similar to the amendment that was adopted by the Judiciary Committee and had passed this committee as SB 311.

On March 4, 1999, Senate Bill 310 was called by its author Senator Murray Clark to be heard before the Indiana Senate for the second time. At this stage in a bill's progression, any Senator can propose an amendment to a bill. When calling SB 310 for the second time, Senator Clark asked those members of the Senate who had amendments to add to SB 310 to please not call these amendments. He stated that he had worked hard to compose a bill that would benefit the adoption process in Indiana. If one of these amendments would pass and be added to his original bill, then there would be a good chance that this amended bill would fail before the entire Senate. After listening to Senator Clark's plea, the authors of the proposed amendments decided against introducing these amendments. Senate Bill 310 then went on to pass the Senate on third reading unanimously. This was the final end for this issue during the 1999 legislative session in

this state. It was never debated by the entire Indiana General Assembly. For now, there will be no law prohibiting homosexuals or single persons from becoming adoptive parents or from providing foster care to needy children in Indiana.

The debate over homosexual adoption has been similar in other states over the last few years. During this year, Arkansas and Texas legislators proposed bills that would prohibit homosexuals from adopting and from becoming foster parents. In 1998, Alabama proposed such legislation which failed. Alabama legislators did, though, pass a joint resolution which expressed the legislative intent to prohibit the adoption of children by homosexual couples. Michigan, Missouri, South Carolina, and Tennessee attempted to pass restrictions on gay and lesbian adoptions in 1997. Missouri had also sought this previously in 1996. These initiatives also failed in South Carolina and Washington in 1995 (Bill Intros 1-3).

Although nine states have failed to enact restrictions on homosexual adoption in the last few years, three states do have such laws. Florida statute specifically contains this prohibition. In the section discussing who may adopt, the law reads, "No person eligible to adopt under this statute may adopt if that person is a homosexual" (Florida 1). Although it does not expressly prohibit adoption by homosexuals and Connecticut statute does prohibit discrimination based on sexual orientation, Connecticut law does allow for judges to take an individual's sexual orientation into consideration when making decisions concerning adoption placements. It states that "the commissioner of children and youth services or a child placing agency may consider the sexual orientation of the prospective adoptive or foster parent or parents when placing a child for adoption or foster care" (Conn 1). Since 1987, New Hampshire has passed a law that bans homosexuals from adopting children. In New Hampshire statute Title XII, 170-b:4, entitled

“Who May Adopt,” the law states, “Specifically as follows, any individual not a minor and *not a homosexual* may adopt:” (New Hamp 1). The law then goes on to explain the legislative intent of this exclusion. Legislators wrote that the “general court finds that, as a matter of public policy, the provision of a healthy environment and a role model for our children should exclude homosexuals, as defined by this act from participating in governmentally sanctioned programs of adoption and foster care. Additionally, the general court finds that being a child in such programs is difficult enough without the added social and psychological complexities that a homosexual lifestyle could produce” (New Hamp 2). This law may not remain in tact for long as a bill was filed in the New Hampshire legislature this year to repeal this prohibition.

Few “gay friendly” public policies regarding adoption have been enacted into law throughout the United States. One does exist, though, in Vermont. Vermont has provisions in its law that allows a partner of a child’s adoptive or biological parent to adopt the child if it is in the best interest of the child (Vermont 2). This is the only state that explicitly grants adoptions to partners in its statutes, but second parent adoptions by homosexuals is also occurring in other states. Second parent adoption allows a homosexual couple to adopt a child so that both partners have equal parental rights. For instance, a non-biological mother can adopt a child born to her lesbian partner without terminating the parental rights of the biological mother. Twenty one states and Washington, D.C. have court precedents that allow for second parent adoptions for same sex couples. These states are Alaska, California, Colorado, Connecticut, Illinois, Indiana, Iowa, Maryland, Massachusetts, Minnesota, Michigan, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, and Washington (Adoption 1). Adoptions by homosexual couples also occurs in other countries. Ontario, Canada, London and Manchester,

England, and the Netherlands allow these adoptions.

The main obstacle that homosexual couples have to overcome when desiring to adopt a child is related to that of marriage. Although all fifty states allow *single* individuals to adopt, most states require *couples* to be legally married to adopt children. The fact that same sex couples are barred from marrying in this country acts a concrete barrier to the joint adoption of children by these homosexual couples. The tides may be turning in favor of same sex couples desired to adopt children though. In recent cases in which unmarried couples, both homosexual and heterosexual, have petitioned to adopt a child, courts have begun to rule that marital status and sexual orientation do not take precedent to the children's best interests (Adoption 2).

Obviously closely tied to the debate over banning adoptions by homosexual individuals is that of same sex marriages. This issue has continued to be contested over the last few years. The debate over the legalization of same sex marriages first exploded on December 3, 1996 when Hawaii Judge Kevin Chang ruled that the refusal of the State of Hawaii to grant marriage licenses to same sex couples violated the Hawaii State Constitution (Coolidge 33). Although the Hawaiian Constitution does not prohibit discrimination based on sexual orientation, it does prohibit discrimination based on gender. Chang concluded that allowing different sex couples to obtain marriage licenses and not same sex couples was discrimination based on gender and therefore unconstitutional (Coolidge 35). Although this ruling did interpret the refusal to grant marriage licenses to same sex couples as unconstitutional, the order for their issuance was delayed pending appeal to the Supreme Court. The issue was then placed on a referendum in the Hawaii elections last November. The amendment, which was added to the Hawaii state constitution, prohibited same sex marriages. It received a slight majority of votes in Hawaii and became law.

Despite this failed attempt to legally recognize same sex marriages in Hawaii, this issue is far from over. A similar event happened in Alaska regarding a same sex marriage ruling which seemed to put this state next in line to acknowledge these agreements. But Alaskan voters also rejected this idea in a ballot initiative. Same sex marriage came to the forefront next in Vermont. Long known for its liberal tendencies, Vermont judges began deliberations on a lawsuit filed by lesbian couples Nina Beck and life partner, Stacey Jolles, and Lois Farnham and partner, Holly Putterbaugh, and gay couple Stan Baker and Peter Harrigan last November (Goldberg 18). These couples were seeking the right to marry. Vermont, which expressly allows second parent adoptions, may be the first state to also legally permit same sex marriages.

The implications of same sex marriages would be varied. The greatest consequences would be on homosexual couples. Many laws concerning inheritance, taxation, employee benefits, parenting, adoption, hospital visitation, funeral arrangements, compelled testimony in court, divorce, and domestic violence protection are affected by civil marriages. By the legalization of same sex marriages, these laws that already involve married heterosexual couples would also apply to lesbians and gay male couples who marry. Laws that would have a direct impact on same sex couples include the Family and Medical Leave Act of 1993 which requires employers to extend unpaid leave of up to twelve weeks during each year to employees to care for a spouse with a serious health condition, laws that prohibit the state from forcing a married person to testify against his or her spouse, and laws allowing compensation for loss of companionship of an injured spouse (Chambers 458-459). Many state laws maintain that *only* family is allowed to visit patients in intensive care units during hospitalization and that spouses are called upon to make life and death decisions when a person is incapacitated. A growing number

of businesses allow financially dependent spouses of their employees to obtain insurance coverage through their companies (Chambers 474). Upon the death of a married person, the living spouse legally inherits at least a portion of his or her spouse's financial assets and debts. But *none* of these laws apply to unwed couples.

If Hawaii would have legalized same sex marriages, it would have also affected the other States. According to the Constitution of the United States, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State" (Epstein 597). This clause has commonly been derived to mean that a marriage that takes place in one State is legally binding in another State. With this, homosexual couples in Indiana could have traveled to Hawaii and married and then returned to Indiana where they would be legally married. Indiana would then have to extend to the couple the same rights that they extend to married heterosexual couples. The same would be true for any other state. When the Hawaiian courts first ruled in favor of the same sex couples, the application of the Full Faith and Credit Clause threw Indiana and federal legislators into a panic.

In response to the Hawaiian ruling, the State of Indiana has enacted legislation banning the recognition of same sex marriages celebrated in another State. Since 1986 the Indiana Code has stated that "only a female may marry a male and only a male may marry a female" (IC 31-7-1-2). This strictly prohibits same sex marriages from taking place within this state, but there was not an act prohibiting their recognition from other states until May 6, 1997. In an attempt to pacify their own fears, the 110th General Assembly of Indiana passed by an 85-10 vote in the House of Representatives and a 38-10 vote in the Senate an amendment to the Indiana Code which states, "A marriage between persons of the same gender is void in Indiana even if the marriage is lawful

in the place where it is solemnized” (House Act No. 1265). With the passage of this amendment, ever traditional State legislators ensured that the so-called “sanctity” of marriage would not be desecrated in this state.

Legislators at the national level also became alarmed with the rulings legalizing same sex marriages in Hawaii. In response to this “threat to marriage,” Congress passed and President Clinton signed into law on September 21, 1996 the Defense of Marriage Act (Dority 38). The supporters of this act believe that the recognition of homosexual relationships will threaten the special legal, social, and economic status of the traditional heterosexual family (Same-Sex 263). Knowing the implications of the Full Faith and Credit Clause, Congress decided to pass this act. The Defense of Marriage Act states, “No State shall be required to give effect to any public act, record, or judicial proceeding of any other State respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State or a right or claim arising from such a relationship.” The act also defines the word ‘marriage’ as a “legal union between one man and one woman as husband and wife” (US Cong 2). Proponents of this act believe that they have a duty to protect what they define as the traditional institution of marriage and that government has an interest in marriage because of its interest in families and children. Congressman Charles Candady, a Republican from Florida stated, “What is at issue here is whether we choose to give moral equivalency to same-sex marriage” (Ellis 114). Although Congress may claim to be “defending” marriage with this act, a great injustice to the states and the people has ensued with its passage. Massachusetts Democrat Congressman and open homosexual Barney Frank was disgusted with the bill. He stated, “This is not the defense of marriage, but the defense of the Republican ticket.” The late Congressman Sonny Bono, a

California Republican, apologized to Frank saying, “I simply can’t handle this yet. I wish I was ready, but I can’t tell my son it’s okay.” To this Frank replied that he is only seeking tolerance and fair treatment not approval (Ellis 114).

The Defense of Marriage Act appears to many critics including the American Civil Liberties Union, which has vowed to challenge it in court if given the chance, to be unconstitutional. First, the United States Constitution is explicit in stating that *Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State*. It does not state that there are to be any exceptions or exclusions from this clause. It does not state *most* or *almost* all acts receive full faith and credit. In passing the Defense of Marriage Act and excluding the recognition of same-sex marriages from this clause, Congress has clearly violated the Constitution’s most unifying provision. The Full Faith and Credit Clause is the first statement in the article of the Constitution concerning states. It was extremely important to the framers of the Constitution that the states, which had been so badly divided under the Articles of Confederation, were unified. The corruption of the Full Faith and Credit Clause is a step back toward divisions and disarray between the states. Secondly, marriage laws, up until this act, have always been under the full discretion of the States. This bill severely undercuts the states’ authority in the area of marriage (US Cong 36). Because of this act, even if a state does choose to legally recognize homosexual marriages, they will still not be recognized for the purposes of federal laws. This act takes away fundamental states rights. By defining marriage as only between an man and a woman, it “denies a state and the people of that state the right to make decisions on the question of same sex marriage” (US Cong 42). There is little point of having a marriage recognized only at the state level. To have one level of government recognize a

marriage and another to deny it is completely incompatible with the cooperative federalism in place in this country today.

The forbiddance of same sex marriages in Indiana can also be disputed as a violation of the Indiana State Constitution. The equal privileges clause of the Indiana State Constitution states, “The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens” (Con. of St. of IN 23). Indiana currently only issues marriage licenses to different sex couples. They do not extend this same privilege to all classes of citizens, namely same sex couples. By granting to heterosexuals marriage licenses and denying that privilege to homosexuals, Indiana legislators are violating the equal privileges clause of the State Constitution.

The issues of homosexual adoption and same sex marriage have come to a standstill in Indiana for the moment. It is doubtful that this is the last that will be heard of this type of legislation. Given the traditional history of Indiana and the conservativeness of certain members of the General Assembly, further versions of legislation like Senate Bill 560 and House Bill 1055 are likely to appear in future sessions. Unfortunately, Indiana continues to be regressive instead of progressive in addressing the difficulties this state faces in dealing with discrimination. Legislation to address hate crimes in Indiana continues to fail in the General Assembly. The recognition of same sex marriages was quickly prohibited two years ago with overwhelming support when the “threat” of this loomed. Homosexuals are not considered a protected class under Indiana law and can legally continue to be discriminated against in the workplace, housing, and public life. Perhaps, one day Hoosier lawmakers will stop fueling the discriminatory tendencies of their constituents and attempt to legally end these practices.

Throughout the history of this country discrimination has been an ever present shadow darkening the lives of undeserving individuals. The United States has muddled through discrimination based on religion, race, age, socioeconomic status, mental and physical abilities, gender, and now sexual orientation. The founders of this nation fought for independence to achieve freedom and equality for its people. These are the two rights Americans cherish the most, and now the American government and Indiana government are trying to deprive certain citizens of both. Choice is a right held by all free people. To have choice, one must be free. To be free, one must have choice. One can not exist without the other. To choose who one marries is a fundamental right of all people. Without this choice, one is not truly free. To be completely free, there must be equality. Equality can only be achieved when legal and social discrimination cease. Legal and social discrimination of homosexuals is currently taking place. Same sex couples do not have the freedom to marry. They struggle to retain the desired privilege of raising children of their own. Homosexuals and heterosexuals are not being treated equally. Lesbian and gay male couples are being discriminated against by the laws and the people who make them. This discrimination must stop. Equality must be demanded. Freedom must be upheld.

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